

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONATHAN FINE and MARK LINDHOLM

MAILED

SEP 05 2003

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2003-1498
Application No. 09/762,000

ON BRIEF

Before GARRIS, OWENS, and JEFFREY T. SMITH, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1-20 which are all of the claims in the application.

The subject matter on appeal relates to a faucet lock for use with a lavatory sink faucet having at least one water valve wrist blade control handle. With reference to the Figure 2 embodiment of the Appellants' drawing, the lock comprises a base 10 and a bracket 2 having a first end adjustably attached to the base such that the second end is positionable adjacent to the wrist blade control handle thereby regulating the degree of freedom of rotation of the

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wrist blade control handle. With reference to the Figure 1 embodiment, the lock comprises a base 10, a first bracket 2 and a second bracket having a first end adjustably attachable to the first bracket such that a second end is positionable adjacent the wrist blade control handle, again thereby regulating the degree of freedom of rotation of the handle. This appealed subject matter is adequately illustrated by independent claims 1 and 11 which read as follows:

1. A faucet lock for use with a lavatory sink faucet having at least one water valve wrist blade control handle, said faucet lock comprising:

a base,

a bracket, having first and second ends thereof, wherein said first end is adjustably attached to said base such that said second end is positionable adjacent to said wrist blade control handle thereby regulating degree of freedom of rotation of said wrist blade control handle.

11. A faucet lock for use with a lavatory sink having at least one water valve wrist blade control handle, said faucet lock comprising:

a base,

a first bracket attached to said base,

a second bracket having first and second ends thereof, wherein said first end adjustably attaches to said first bracket such that said second end is positionable adjacent to said wrist blade control handle thereby regulating degree of freedom of rotation of said wrist blade control handle.

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The references set forth below are relied upon by the Examiner in the § 102 and § 103 rejections before us:

Jones	5,588,316	Dec. 31, 1996
Nachbauer	5,927,111	July 27, 1999

Under 35 U.S.C. § 102(b), claims 1, 5, 6 and 9 stand rejected as being anticipated by Nachbauer and claims 1, 2, 4 and 9 stand rejected as being anticipated by Jones.

Under 35 U.S.C. § 103(a), claims 3, 7, 8 and 10-20 stand rejected as being obvious over Nachbauer and Jones.

We refer to the brief and the answer for a complete exposition of the opposing viewpoints expressed by the Appellants and by the Examiner concerning the above noted rejections.

OPINION

None of the rejections advanced by the Examiner on this appeal can be sustained.

As correctly argued by the Appellants and implicitly recognized by the Examiner, neither Nachbauer nor Jones contains any teaching or suggestion that the respective faucet locks thereof are for use with a lavatory sink faucet having at least one water valve wrist blade control handle and concomitantly that these prior art faucet locks are capable of regulating the degree of freedom of rotation of a wrist blade control handle as recited in appealed

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claim 1 and as required by all appealed claims. Nevertheless, the Examiner considers Nachbauer to anticipate appealed claim 1 because "[t]his device [i.e., patentee's faucet lock] is capable of use with a "wrist blade" type handle and the side walls of 11, particularly the front most side wall would inherently meet the last line of claim 1 [i.e., the previously mentioned function of regulating the degree of freedom of rotation of the wrist blade control handle]" (answer, page 4). The Examiner regards Jones as anticipating appeal claim 1 for the same reason (i.e., "[t]he capable use here is as set forth supra" (answer, page 4)).

It is well settled that an Examiner must provide some evidence or scientific reasoning to establish the reasonableness of the Examiner's belief that the functional limitation in a rejected claim is an inherent characteristic of the prior art. Ex parte Skinner, 2 USPQ2d 1788, 1789 (Bd. Pat. App. & Int. 1986). Here, the Examiner has provided absolutely no evidence or scientific reasoning to establish the reasonableness of his position that the aforementioned regulating function of appealed claim 1 is an inherent characteristic of the faucet locks respectively disclosed in Nachbauer and Jones. Instead, the Examiner's position that the prior art faucet locks would inherently possess the capability of

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performing this function is nothing more than speculative assumption.

Under the circumstances recounted above, it is apparent that the Examiner has failed to carry his initial burden of establishing a prima facie case for believing that appealed claim 1 is anticipated by Nachbauer or Jones based on the theory that the faucet locks disclosed therein would be inherently capable of performing the function recited in this claim. It follows that we cannot sustain the § 102 rejection of claims 1, 5, 6 and 9 as being anticipated by Nachbauer or the § 102 rejection of claims 1, 2, 4 and 9 as being anticipated by Jones.

In support of his § 103 rejection based on Nachbauer and Jones, the Examiner proffers the following rationale on page 4 of the answer:

The species were said to be obvious variants by applicant in paper #5. Fig. 1 has been examined on the merits and claims drawn thereto have been rejected supra.^[1] In view of applicant's admission these claims believed directed to embodiments other than Fig. 1 are deemed obvious over Fig. 1 and therefore unpatentable over the art here as set forth supra.

¹ It is appropriate to clarify that the claims referred to by the Examiner as "rejected supra" are directed to the embodiment or species of Appellants' Figure 2 rather than Figure 1 as the Examiner believes.

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As reflected by the above quotation, the Examiner's § 103 rejection is based on the so-called admission, made by the Appellants in paper no. 5 in response to the Examiner's election of species requirement, that the inventive species shown in their drawing figures are obvious variants of each other. Such an admission concerns only the inventive species disclosed by the Appellants and is irrelevant to the issue of whether the disclosures of Nachbauer and Jones would have suggested a faucet lock of the type defined by the here rejected claims to one with an ordinary level of skill in this art. Regarding this issue, the Examiner has failed to follow a single one of the long established guidelines for assessing the matter of obviousness within the meaning of 35 U.S.C. § 103 (e.g., see the Manual Patent Examining Procedure, § 2141 (8th Ed. Rev. 1, Feb. 2003)).

For these reasons, we also cannot sustain the Examiner's § 103 rejection of claim 3, 7, 8 and 10-20 as being obvious over Nachbauer and Jones.

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The decision of the Examiner is reversed.

REVERSED

BRADLEY R. GARRIS
Administrative Patent Judge

TERRY J. OWENS
Administrative Patent Judge

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JEFFREY T. SMITH
Administrative Patent Judge

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